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PETITION OF

J. W. FINNIE

CASE NO. INS-2002-00111

**For review of Allstate
Insurance Company's claims
handling practices**

HEARING EXAMINER'S RULING

August 2, 2002

On April 16, 2002, J. W. Finnie filed a petition requesting that the Bureau of Insurance investigate and take disciplinary action against Allstate Insurance Company ("Allstate"). Specifically, Mr. Finnie requests that the Bureau of Insurance ("Bureau") undertake a market conduct examination of Allstate, levy additional sanctions and fines, and suspend Allstate's license to conduct business within the Commonwealth until it discontinues actions cited by the Bureau in prior market conduct examinations. On April 23, 2002, the Commission issued its Order Docketing Case, Appointing Hearing Examiner, and Setting Date for Filing Answer, which, among other things, directed the Bureau to file on or before May 13, 2002, an Answer or other responsive pleading to Mr. Finnie's petition.

On May 13, 2002, the Bureau filed a Motion for Summary Judgment. In its motion, the Bureau argued that its decision regarding the disciplinary action taken against an insurer should be entitled to substantial deference, subject to reversal only if its decision was arbitrary and capricious. The Bureau maintained that "the facts of this case clearly demonstrate the Bureau's continued vigilance in requiring Allstate to conform to the insurance laws in its claims handling practices in Virginia."¹ In addition, the Bureau pointed out that it just completed a market conduct examination, which will be the third such examination within the last seven years. Furthermore, the Bureau asserted that 924 complaints/inquiries involving Allstate for the period January 1, 1999, through March 28, 2002, represents a small percentage when compared to the 655,130 Allstate policies in force in Virginia and that each complaint/inquiry does not represent a violation over which the Commission has jurisdiction. Finally, the Bureau contended that Mr. Finnie failed to provide sufficient information with regard to his and other claims disputes with Allstate that would permit the Bureau to determine whether any violations have occurred, nor has Allstate been given an opportunity to respond to Mr. Finnie's allegations.

On May 23, 2002, Mr. Finnie filed a response to the Bureau's Motion for Summary Judgment, in which, among other things, he asked that the motion be denied and that the case be assigned "Class Status" or "Class Action Status." Mr. Finnie further supplemented his petition with additional information and exhibits on May 30, 2002; June 10, 2002; and June 25, 2002.

¹ Motion for Summary Judgment at 5.

It is well settled that the Commission has the authority to grant summary judgment on the basis of pleadings and prefiled evidence.² Nonetheless, Rule 3:18 of the Rules of the Supreme Court provides that “[s]ummary judgment shall not be entered if any material fact is genuinely in dispute.” Moreover, “[a] court in considering such a motion must adopt those inferences from the facts that are most favorable to the nonmoving party, ‘unless the inferences are strained, forced, or contrary to reason.’”³

In this case, the Bureau argued that the only issue in dispute is legal in nature, namely, whether the Bureau’s failure to suspend Allstate’s license or impose other penalties upon Allstate is arbitrary and capricious. I disagree. Mr. Finnie raised the issue of whether Allstate has violated the Virginia Unfair Claims Settlement Practices Act. This is a factual question, which appears to be in dispute. Accordingly, the Bureau’s Motion for Summary Judgment is hereby ***DENIED***.

In addition, Mr. Finnie’s request for “Class Status” or “Class Action Status” must be denied, as “broad class actions of federal practice are not available in Virginia courts.”⁴ Nonetheless, Mr. Finnie complained that the Bureau was, in effect, taking on the role of defending Allstate. Also, the Bureau argued that Allstate should have an opportunity to respond to Mr. Finnie’s claims. Though the Commission may not have the option of a broad class action, it may add necessary parties to a case. A necessary party has been defined broadly to include any person who has an interest or an expectancy likely to be defeated or diminished by a claim.⁵ Moreover, a court lacks the power to proceed with a suit unless all necessary parties are properly before the court.⁶ Allstate may be affected by the outcome of Mr. Finnie’s petition. Therefore, I find that Allstate is a necessary party and must be joined in this proceeding. Accordingly,

IT IS DIRECTED that the Bureau and Allstate file an answer to Mr. Finnie’s petition on or before August 23, 2002. **IT IS FURTHER DIRECTED** that the Commission’s Document Control Center shall forthwith mail a copy of all documents in the Commission’s case file on this matter to Jeffrey W. Williams, Regional Counsel, Allstate Insurance Company, 12150 East Monument Street, Fairfax, VA 22033.

Alexander F. Skirpan, Jr.
Hearing Examiner

² *Blue Cross of Virginia v. Commonwealth of Virginia*, 221 Va. 349 (1980).

³ *Carson ex rel. Meredith v. LeBlanc*, 245 Va. 135, 139-40 (1993) (citation omitted).

⁴ W. Hamilton Bryson, *Handbook on Virginia Civil Procedure* at 193 (3rd ed. 1997) (footnotes omitted).

⁵ *Asch v. Friends of Mt. Vernon Yacht Club*, 251 Va. 89 (1996).

⁶ *Id.*